

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	CC Docket 97-213
	)	File No. NSD-L-00-234
CC Communications- TRS 808143	)	
Communications Assistance for Law	)	
Enforcement Act (CALEA) Extension of	)	
Capability Requirements	)	

**PETITION FOR EXTENSION**

CC Communications (TRS # 808143) respectfully submits this, request for an extension of the January 30, 2004 deadline for compliance, pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act (“CALEA”), for certain capability assistance requirements imposed by Section 103 of CALEA. Specifically, CC Communications requests the Commission to extend the deadline of Section 103 compliance with respect to packet-mode communications to January 30, 2005.

**BACKGROUND**

CC Communications is a wireline local exchange carrier whose service area is in Churchill County, Nevada. CC Communications has approximately 13,750 access lines, serving both residential and business customers. CC Communications qualifies as a “rural telephone company” under 47 U.S.C. §153(37).

CC Communications wireline network offers packet-switched services utilizing Digital Subscriber Line (“DSL”) and Integrated Services Digital Network (“ISDN”) to provide data and voice communications. CC Communications is utilizing Lucent 5ESS Release 16 technology. The DSLAM equipment currently in service for DSL services is

the Superline DSLAM manufactured by AG Communications, Cantea ADSL, Telstrat ADSL and ALCATEL/NewBridge 350 DSLAM. CC Communications previously participated with the Federal Bureau of Investigation (FBI) in the Flexible Deployment Program, however, this program is no longer offered. Since CC Communications' November 19, 2001 waiver petition, CC Communications has become compliant with the CALEA ISDN packet-mode communication requirements with the Lucent 5ESS Release 15.

However, at this time there is not a packet-mode capability solution nor standard for equipment used for such services as DSL. Compliance regarding DSL services is contingent on the development of a standard for manufacturers of such technology.

#### **ARGUMENT**

Section 107(c) authorizes carriers to petition the Commission for "1 or more" CALEA deadline extensions,<sup>1</sup> and the Commission may grant an extension where, as here, compliance with the Section 103 capabilities requirements "is not reasonably achievable through application of technology available within the compliance period."<sup>2</sup> The Commission should exercise its authority under Section 107(c) to grant CC Communications an extension of the November 19, 2003 deadline for packet-switched technologies. Compliance will not be reasonably achievable for CC Communications by that date due to there not being standards in place for the DSL technologies that CC Communications employs.

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<sup>1</sup> 107 U.S.C. § 10.06(c)(1).

<sup>2</sup> *Id.* §1006( c)(2)

As noted above, CC Communications offers DSL-based services. There exists, at present, no industry standard to serve as a “safe harbor” for carriers using such technology, as envisioned in Section 107(a).<sup>3</sup> In the absence of such a standard, CC Communications and other similarly situated carriers remain subject to the obligations imposed by Section 103.<sup>4</sup> However, CC Communications’ compliance with that section’s capability requirements by November 19, 2003 through the application of available technology will not be reasonably achievable. Because DSL-based communications are aggregated and carried in an inseparable form once they leave the Digital Subscriber Line Access Multiplexer (“DSLAM”), isolation and interception of those communications is possible only before the communication reaches the “DSLAM”.<sup>5</sup> At present, no equipment exists that would allow interception at or before the DSLAM, and no such equipment is expected to become available prior to November 19, 2003.<sup>6</sup> The manufacturers from which CC Communications has purchased DSLAMS, have not indicated when they will have a commercially available upgrade to implement the necessary capabilities. Nor does CC Communications have cost estimates for future upgrades. Once CALEA solutions become commercially available, CC Communications anticipates that it will need approximately one year to order, engineer, install and test the solutions. CC Communications requests this extension in hope that a solution is developed and made available during the time of the extension.

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<sup>3</sup> *See id.* § 1006(a).

<sup>4</sup> *See id.* § 1006(a)(3)(B).

<sup>5</sup> *See, e.g.,* Declaration of NAME at ¶ 5.

<sup>6</sup> *See id.*

CC Communications currently has no plans or business reason, other than CALEA compliance, to install the required upgrades in the foreseeable future, let alone by November 19, 2003. The economics of further upgrades are in doubt at this time as stated previously. CC Communications cannot justify upgrades without due consideration of the financial impact to the company as well as to its ratepayers.

Because compliance will not be achievable for these services until a solution is available and the potential cost of compliance will place an extraordinary burden on CC Communications, the Commission should extend the deadline to November 19, 2005 for CC Communications to bring its DSL-based services into compliance with Section 103 requirements.

CC Communications also offers ISDN-based services. CC Communications employs a Lucent 5ESS (Release 16) switch to provision these services. Since its Petition for Waiver filed in November 2001, CC Communications has diligently sought to acquire technology that would bring it into compliance with CALEA, and CC Communications has acquired and implemented the technology necessary to comply with CALEA ISDN package-mode communications requirements.

Cost is highly relevant to Section 107(c) extension determinations. Congress enacted Section 107(c) precisely because it did not want to impose on carriers undue compliance burdens.<sup>7</sup> Thus, Section 107(c) conditions relief on whether compliance is “reasonably achievable” – the same standard that Congress used for relief under Section 109(b), which undisputedly requires the Commission to consider compliance costs and

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<sup>7</sup> Congress’s concern about imposing undue burdens on carriers is also reflected in Section 201(a) of CALEA, which directs judges considering sanctions against a carrier to consider the carrier’s “ability to pay,” the effect on the carrier’s “ability to continue to do business,” and a carrier’s “good faith efforts to comply in a timely manner.” See 18 U.S.C. § 2522( c)(2)(B).

their financial impact on carriers.<sup>8</sup> Indeed, the Commission itself has recognized that Section 107 relief is, in essence, a more limited version of Section 109 relief: “To the extent we find it appropriate to grant extensions of time under Section 107(c), it may be necessary to provide relief under Section 109 only in unusual cases.”<sup>9</sup>

As demonstrated by CC Communications’ upgrades for compliance with CALEA requirements for ISDN packet-mode surveillance capabilities, CC Communications is committed to compliance as technology and costs allow. The Commission therefore should recognize – and make allowance for – the fact that CALEA compliance with respect to CC Communications packet-mode services is currently impossible (in the case of DSL-based services) and/or exceedingly costly and extend the deadline until November 19, 2005.

### CONCLUSION

The Commission accordingly should grant CC Communications an extension to November 19, 2005 for the installation of the packet-mode capabilities in this petition.

Respectfully Submitted this 29<sup>th</sup> day of 2004,

/S/ Mark Feest

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<sup>8</sup> See 47 U.S.C. § 1008(b)(1)(B), (D), (E), (H).

<sup>9</sup> See *Communications Assistance for Law Enforcement Act*, Second Report and Order, 15 FCC Rcd 7105, 7127 ¶ 37 (1999)3